
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No. 6464 of 2007

Date of decision: 14.12.2007

Gyarshi Lal

...Petitioner

Versus

Hari Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sanjay Mittal, Advocate for the petitioner.

RAJESH BINDAL, J.

The petitioner has approached this Court challenging the order dated October 13, 2007 passed by the learned Additional District Judge, Narnaul whereby application filed by him for setting aside exparte order dated December 11, 1995 and the judgment and decree passed by the learned Lower Appellate Court on June 1, 2000 in Civil Appeal No.87 of 1995 titled as Hari Singh Vs. Hoshiyar Singh and others, was dismissed.

Briefly the facts as stated in the petition are that respondent no. 2 Hoshiar Singh filed civil suit against the petitioner and other respondents for possession by way of specific performance. The suit was decreed by learned trial Court vide judgment and decree dated October 20, 1995 in which the present petitioner was duly represented by a counsel. There were three defendants, namely, Hari Singh son of Mangla, Gyarshi Lal son of Khub Ram and Sukan Singh son of Mangla. The present petitioner was defendant no. 2 in the suit, being the buyer of the property, which was transferred by Hari Singh in his name during currency of earlier agreement to sell entered into with Hoshiar Singh. The appeal before the Learned Lower Appellate Court was filed only by the vendor of the property Hari Singh, who had agreed to sell the property to Hoshiar Singh, the plaintiff in the suit, in favour of whom the judgment and decree was passed by the learned trial Court. The present petitioner was merely impleaded as

respondent in the appeal. The petitioner, who was respondent no. 2 in the appeal was proceeded against exparte vide order dated December 11, 1995 in view of the report of refusal by the Process Server dated December 9, 1995.

The claim set up by the petitioner for filing application for setting aside exparte order was that report dated December 9, 1995 was a forged and fabricated report as the petitioner was posted as Head Constable in RPSF, Dayabasti, Delhi and was not present in his village on December 9, 1995 on which date the Process Server made a report of refusal of service. To justify delay in filing the application, the plea was raised that he came to know about the filing of appeal, only from Hoshiar Singh plaintiff and thereafter when he contacted his counsel, he came to know about filing and disposal of appeal only on June 1, 2006. However, these facts were controverted by the respondents in view of the report of the Process Server to the effect that he had refused to receive the summons, so he had the knowledge of the pendency of appeal.

The plea set up by the petitioner for setting aside of the exparte order and the judgment and decree passed in appeal was not accepted by learned Court below for the simple reason that firstly the petitioner being not aggrieved against the judgment and decree of the trial Court decreeing the suit of the plaintiff never filed any appeal. In appeal, the report of the Process Server was that he had refused to receive summons and the fact that he had knowledge of pendency of appeal is further borne out from the record in the execution proceedings where he had been represented by a counsel, which ultimately were finally decided on April 27, 2002 whereas application for setting aside of exparte order was filed only on January 24, 2002.

Before this Court learned counsel for the petitioner has placed on record document Annexure P-3 in form of a certificate issued by Assistant Commandant, 6 Bn. R.P.S.F., Dayabasti, Delhi-36 to submit that petitioner was present at Delhi on the crucial date i.e. December 9, 1995 when a report of refusal of his service was made by the Process Server at his village address.

First of all this document was never relied upon by the petitioner before the Court below. Meaning thereby the authenticity thereof is not established. The extract of the document is reproduced below:-

“This is certified that Shri Gyarsi Lal son of Khuba Ram Head Constable 6 BN, RPSF, Dayabasti, Delhi-35 now retired from Railway Service wef 31.03.996, was present in 'A' coy. 6 BN, RPSF, Dayabasti, Delhi-35 on 09.09.1995 as per record to 09.12.1995.

Sd- Assistant Commandant
6 Bn. R.P.S.F.
Dayabasti, Delhi-36”

As the language used in the document created suspicion, learned counsel for the petitioner was asked to produce the original thereof, however, he could produce only a photo copy of the document. A perusal of the photocopy of the document shows that there was full stop after the words 'on 9.9.1995'. Thereafter three words were added 'as per record' and again full stop was put. Thereafter two words were added 'to 9.12.1995'. A bare perusal of the document clearly shows that these words were added later on in the certificate as these were in a different type as compared to type writer used for other part of the certificate. Still further last line otherwise also on a simple reading did not make any sense.

The petitioner initially was not aggrieved against the judgment and decree as he did not file any appeal before the Lower Appellate Court and secondly he had full knowledge of pendency of appeal as he was duly represented by counsel in the execution proceedings of the judgment and decree of the trial Court. When the petitioner has not been able to substantiate by any cogent reason for the delay in filing the application, I do not find any illegality has been committed by learned Court below in dismissing the application.

Accordingly, while concurring with the view expressed by learned Court below, the present revision petition is dismissed.

December 14, 2007
Pka

(Rajesh Bindal)
Judge